

APPEAL NO. 93440

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on April 28, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) did not sustain an injury to his back or any other part of his body while in the course and scope of his employment for the employer and that there can be no resultant disability. Claimant appeals stating that he did injure his back on the job on (date of injury) (at the hearing he testified that he was injured on date), and that he wishes to receive temporary benefits and medical benefits. Respondent (carrier) urges that the decision be affirmed asserting there is sufficient evidence to support the findings and conclusion of the hearing officer.

DECISION

Determining that the hearing officer's findings and conclusions are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and that there is sufficient supporting evidence, the decision is affirmed.

Clearly, there was conflicting evidence in this case. That evidence is fairly and adequately set out in the hearing officer's Decision and Order and is adopted for purposes of this decision. The claimant testified that he injured his back on date, (on appeal he states it was October 26), as he started his third day on the job. He stated this happened when he was carrying boxes holding metal pieces. He did not know the weight but thought they were heavy. The employer's office manager, (Mr. E), testified that the materials being carried were light strips of metal which were flimsy and had to be carried by two people to prevent bending and that they weighed approximately 15 pounds. Claimant testified that he felt his back "pop" and told a coworker and that they went into the office to report it to Mr. E. Claimant said there were a lot of people around when he injured himself, but he does not know any of their names. Mr. E stated that the employee working with the claimant, Allen Phillips (AP), advised him that the claimant said he hurt his back but that he, AP, did not see the claimant injure himself or hear anything drop. The employer took the claimant to a doctor. According to the claimant, the doctor told him it was just his muscles and to rest for three days, and that he also referred him to another doctor, (Dr. S). A report dated November 3, 1992 from Dr. S indicates a diagnosis of: "(1) Low back sprain, and (2) Spondylolysis L5, with Spina Bifida Occulta of L5, this probably congenital" and states "the patient is unable to return to his work at the present time." The claimant testified that he asked Dr. S for a paper so he could go to Mexico to visit his sick mother and that Dr. S became angry and said that there was nothing wrong with him and he could go to work. Claimant subsequently saw another doctor. A Texas Workers' Compensation Form 61, Initial Medical Report dated "12/08/92" from a (Dr. K) indicates diagnosis of sprain/strain to the lumbar region, dorsal thoracic and cervical area.

Mr. E testified that it was discovered that the claimant had given them false information/documentation and that he had not been truthful at the time he was employed.

He also stated that after the day of the alleged injury, the claimant returned in a week or ten days with a slip saying he couldn't work and that he displayed difficulty in getting out of his vehicle and coming into the office. Mr. E testified that later that same day he observed the claimant at a convenience store and that he wasn't having any difficulty at all. Because the claimant lived in the vicinity of the employer, Mr. E observed him on other occasions and found it was frustrating to see the claimant come in with work excuses displaying difficulty but that he was fine other times.

The carrier apparently retained an investigative company to observe the claimant. A video was in evidence which shows the claimant in rather normal activity including bending, stooping, getting in and out of a vehicle without any apparent difficulty and helping to push a stalled vehicle.

As indicated, the hearing officer found that the claimant did not sustain an injury in the course and scope of his employment. It is apparent she did not find the claimant's testimony totally credible. Under the provisions of Article 8308-6.34(e), the hearing officer is the sole judge of the weight and credibility to be given the evidence. Where, as here, there is conflict and inconsistency in and between the evidence, the hearing officer resolves such matters, Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992, and makes findings of fact. Article 8308-6.34(g). Where there is sufficient evidence to support those finding, and the findings and conclusions are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, there is no sound basis to disturb the decision. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge